

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

NANCY KEENAN

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SCHOOL DISTRICT NOS. 9 & 9B
POPLAR, ROOSEVELT COUNTY
MONTANA,

OSPI - 156-88

Appellant,

DECISION AND ORDER

vs.

BETTY HOLUM,

Respondent.

* * * * *

STATEMENT OF THE CASE

The Appellant, Poplar School District (hereinafter referred as "the District"), had contracted with Betty Holum to work in the school lunch program. The first contract between the parties was entered into on November 28, 1977. Following that first contract, the parties executed a contract during each of the next eight years. In 1986, the District concluded that it could not offer Mrs. Holum a contract for the 1987-88 school term because of Montana's nepotism statute, Section 2-2-302, MCA, since Charles Trinder, the son-in-law of Betty Holum, had been elected to the Board of Trustees of the Poplar School District. The Montana Legislature amended the nepotism statute in 1987 to permit school

1 initial contract with a district prior to the time their relative
2 was elected to the school board. Furthermore, the statute
3 specifically provided that the amendment was retroactive to 1985
4 and permitted a district to issue a renewal contract to persons
5 who had not received a contract because of the nepotism statute.

6 On May 18, 1987, the Poplar School Board voted to issue a
7 contract to those persons who were not offered contracts in 1986
8 due to the nepotism statute. Betty Holum was one of the persons
9 who had not been offered a renewal contract in 1986. The motion
10 approved provided that these persons would be entitled to all
11 benefits. However, prior to making a contract offer to the
12 persons eligible to receive it, the Board of Trustees held a
13 meeting on June 8, 1987, during which the Board rescinded the
14 motion adopted on May 18 and approved a motion that would merely
15 place the persons eligible for a "renewal" contract on a waiting
16 list to receive a contract offer when the first vacancy occurred.

17 The first vacancy for an assistant cook's helper occurred at
18 the end of the 1987-1988 school term. On June 16, 1988,
19 Superintendent Douglas Sullivan offered Betty Holum a contract
20 with the Poplar School District. Mrs. Holum signed the contract
21 on June 21 and returned it to the District. In addition to
22 signing the contract, Mrs. Holum added the following remarks to
23 the contract document: "I'm very excite (sic) about my job but
24 very unhappy about the \$5.50 hr. per hr."

25 On June 29, 1988, Superintendent Sullivan wrote to Betty Holum

1 contending that the comment she added to the contract had "raised
2 a question in my mind about whether or not you have accepted the
3 position as it was offered." Superintendent Sullivan's letter
4 stated:

5 Please clarify whether or not you are accepting this
6 position as it is offered by the Board. In the event that
7 you find the terms and or conditions of employment
8 unacceptable I need to know so the position can be
 advertised. A contract has been enclosed for your review
 and signature. It must returned no later than 4:30 P.M.,
 on July 8, 1988. If the contract is not received by that
 time I will assume that you have declined the job offer.

9 On July 6, 1988, Betty Holum's attorney wrote to
10 Superintendent Sullivan stating Betty Holum had accepted the
11 position offered her. The letter also informed him that Mrs. Holum
12 had appealed the issue of her wage to the County Superintendent
13 of Schools and included a copy of the appeal.

14 The County Superintendent held a hearing on August 11, 1988,
15 and issued her Findings of Fact, Conclusions of Law and Order on
16 September 28, 1988. The Order stated:

17 My decision as to what I believe would be a fair and
18 acceptable wage for Betty Holum as a cook's assistant for
19 the 1988-89 school year would be \$6.91 per hour plus her
20 continued Health Insurance, the statutory benefits which
21 are given the cook's assistants, retirement benefits, and
 the opportunity to receive the additional 2 years of
 retirement benefits to be added to what she has
 accumulated. This is a 27 cents raise or \$1.62 per day
 commencing on the first (1) day that she begins work.

22 The Poplar School District filed its appeal with the State
23 Superintendent of Public Instruction on November 1, 1988. The
24 State Superintendent granted the MOTION FOR WITHDRAWAL made by
25 counsel for Betty Holum, Carol C. Johns, on December 14, 1988.

1 Mrs. Holum decided that she could not afford counsel to represent
2 her at the state level. The District filed the initial brief in
3 support of its appeal on February 3, 1989. Counsel for the State
4 Superintendent contacted Respondent, Betty Holum, on April 6,
5 1989, to confirm that she was not represented by counsel and to
6 determine whether or not she wanted to present written or oral
7 argument in support of the decision issued by the County
8 Superintendent. On April 11, 1989, Mrs. Holum confirmed that she
9 was not represented by counsel and that she did not intend to file
10 a statement in response to the District's brief. This matter was
11 deemed submitted for decision on April 12, 1989.

12 DECISION

13 The State Superintendent of Public Instruction has
14 jurisdiction of this appeal in accordance with Section 20-10-
15 132(2), MCA.

16 Having reviewed the complete record including the transcript
17 and exhibits presented at the hearing and the brief submitted by
18 the Appellant District, this State Superintendent now makes the
19 following decision: The Findings of Fact are affirmed with the
20 exception of Findings of Fact No. 8 which misstates the law. The
21 nepotism statute in 1986 prohibited the Board from renewing Betty
22 Holum's contract with the district. Conclusions of Law are
23 affirmed with the exception of Conclusions of Law Nos. 10, 14,
24 and 15. Conclusions of Law Nos. 10, 14 and 15 are reversed as an
25 abuse of discretion by the County Superintendent.

ORDER

The Order of the County Superintendent is hereby modified to read as follows:

The contract between Betty Holum and the Poplar School District for services "commencing the 29th day of August 1988" for a term of 180 days is a legally binding contract on both parties. The District refused to honor the contract. The District is hereby ordered to pay Betty Holum all sums and benefits that she would have received under the terms of the contract as evidenced by Appellant's Exhibit 16.

MEMORANDUM OPINION

Standard of Review

The State Superintendent's standard of review in an appeal of the decision of the County Superintendent is set forth in 10.6.125 ARM. This standard is analogous to the standard of review used by a District Court reviewing a decision of an administrative agency under the Montana Administrative Procedures Act, Section 2-4-704. Findings of Fact are subject to a "clearly erroneous" standard and findings are not clearly erroneous if supported by "substantial credible evidence in the records." Conclusions of Law are also subject to an abuse of discretion standard of review.

Issues on Appeal

1. Whether the County Superintendent's conclusion that Betty Holum had a legally binding contract with the Poplar School District for the 1988-89 term was an abuse of discretion.

2. Whether the County Superintendent's conclusion that the contract wage rate was unconscionable was an abuse of discretion.

The Contract

1 The threshold issue is whether there was a contract between
2 the District and Betty Holum for the 1988-89 school term.

3 Critical to this determination is Appellant's exhibit 16. The
4 District contends that language added to the contract document by
5 Betty Holum constituted a change in the terms of the offer,
6 thereby terminating the offer. Mrs. Holum contends that she
7 accepted the offer by signing the contract document and returning
8 the document to the District before the July 8, 1988, deadline.

9 She added the following language to the contract:

10 I'm very excite (sic) about my job but very unhappy about
11 the \$5.50 hr. per hr.

12 The County Superintendent's Conclusion of Law No. 13 states:

13 "Betty accepted the position, but she objected to the cut
14 in wages."

15 This State Superintendent affirms the conclusion that Betty
16 Holum had a valid contract with the District for school year 1988-
17 89. See Appellant's exhibit 16. The words added to the contract
18 merely express two feelings -- first, joy at getting the job and
19 second, being unhappy with the salary. The words are not a
20 counter proposal. The words do not modify any term of the
21 contract. Mrs. Holum's filing of the appeal with the County
22 Superintendent is completely consistent with her contention that
23 she accepted the offered contract. In addition, her attorney
24 confirmed her acceptance of the contract in a July 6, 1988, letter
25 to Douglas Sullivan, Superintendent of Schools for the District.

See Appellant's exhibit No. 18.

Unconscionable Term of the Contract

An "unconscionable bargain" has been regarded as one such that no person in his or her senses and not under delusion would make on the one hand, and that no honest and fair person would accept on the other hand, the inequality being so strong and manifest as to shock the conscience and confound the judgment of any person of common sense. Although courts will not ordinarily inquire into the adequacy of the consideration of a contract, they may do so when the inadequacy is so gross and manifest as to shock the conscience. See 27 Am. Jur. 2d 26 Equity.

If a contract or term thereof is unconscionable at the time the contract is made, a court may refuse to enforce the contract or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result. Restatement Contracts 2d, Section 208.

Considering the above legal standard for determining when a contract may be reformed by a court because of an unconscionable term, this State Superintendent concludes that the County Superintendent abused her discretion in reforming the contract between the parties by substituting an hourly wage of \$6.91 per hour for the \$5.50 per hour set forth in the contract. Both parties are bound by the terms of the contract set forth in Appellant's exhibit No. 16.

Contract for an Express Term

In Nordlund v. School District No. 14, Mont. , 738
P.2d 1299, 44 St. Rptr. 1183, 1186 (1987), the Montana Supreme
Court stated:

The second issue is whether the District Court
erred in concluding that Nordlund could prove
no set of facts from which the obligation of
good faith and fair dealing could be implied as
a term of his employment contract. . . . The
Court dismissed the complaint on the basis that
an express one-year contract was negotiated
between the parties and that the facts alleged
by Nordlund failed to suggest a breach of
contract.

Since the court concludes the defendants did not
breach plaintiff's employment contract, the
defendants cannot be found to have acted
unreasonably and in breach of the implied
covenant of good faith and fair dealing
attendant the subject." [Cite omitted.]

Employment under a contract for an express term terminates at
the expiration of the appointed term. See Section 39-2-501, MCA.

Each of the nine contracts between Betty Holum and the
District [Appellant's Exhibits 1 through 9] contained language
similar to the following language taken from the 1985-1986
contract:

WITNESSETH: Said employee being able to work in the
Public Schools in Said County and State hereby contracts
with said School District for the term of 187 days
commencing the 26th day of Aug 1985 and said School
District hereby contracts to hire said employee to work
as herein set forth, in consideration for which the School
District will pay to said employee the sum of \$6.64 pr.
hr. installments, as follows:

1 The term of Betty Holum's employment was expressed in terms
2 of the number of days to be worked. The District is correct in
3 its contention that it did not fire Betty Holum in 1986. Her
4 express term contract with the school district expired in
5 accordance with the language of the contract.

6 The Nepotism Law

7 Mrs. Holum contends that the nepotism law did not require that
8 relatives of School Board Trustees be fired.

9 At the time the District was considering whether or not it
10 could legally offer Betty Holum a new express term employment
11 contract for the 1986-87 school year, the relevant section of the
12 nepotism statute made it "unlawful" for the Board to "appoint to
13 any position of trust or emolument any person related . . . by
14 affinity within the second degree." There is no dispute that
15 Betty Holum's son-in-law was a member of the Board of Trustees
16 that would have appointed her to a contract for the 1986-87 school
17 term.

18 The 1987 amendment to the nepotism law did not require that
19 any public entity rehire persons whose contracts were not renewed
20 because of the statute prior to amendment. It merely permitted
21 the District to offer a renewal contract to the affected persons.

22 Modified Order

23 Betty Holum's appeal to the County Superintendent was filed
24 on July 6, 1988. The rules of procedure for appealing a final
25 decision of the Board of Trustees requires that such an appeal be

1 filed within 30 days of the final decision. 10.6.103(5) ARM.
2 Therefore, the remedy awarded to Mrs. Holum is affected by legal
3 error. Mrs. Holum did not appeal the non-renewal of her contract
4 in 1986. Her only timely appeal was in regard to the wage rate
5 of her 1988-89 contract with the district. Therefore, there is
6 no legal basis granting relief prior to the effective date of the
7 1988-89 contract.

8 Dated this 1st day of September, 1989.

9 Nancy Keenan
10 NANCY KEENAN
State Superintendent

11 CERTIFICATE OF SERVICE

12 This is to certify that on the 1st day of September, 1989,
13 a true and exact copy of the foregoing DECISION AND ORDER was
mailed, postage prepaid, to:

14 Peter O. Maltese
Attorney at Law
15 P.O. Box 969
609 South Central Avenue, Suite 15
16 Sidney, MT 59270

17 Kathleen Tubman
Roosevelt County Supt. of Schools
18 Roosevelt County Courthouse
Wolf Point, MT 59201

19 Betty Holum
20 P.O. Box 712
Poplar, MT 59255

21 Linda V. Brandon
22 Linda V. Brandon
23 Paralegal Assistant
24 Office of Public Instruction
25